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§ 75.18 Adoption.

The Tribal Council of the Eastern Band of Cherokee Indians shall be empowered to enact ordinances governing the adoption of new members.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 75.19 Distribution of judgment funds.

The membership roll of the Eastern Band of Cherokee Indians of North Carolina will be brought up to date as of October 10, 1974, to serve as the basis for distributing certain judgment funds awarded to the Band in Indian Claims Commission dockets 282-A through L.

(a) Filing of and action on applications shall be in accordance with regulations in this part 75, except as otherwise provided in paragraphs (b) through (g) of this section.

(b) In lieu of notice provisions contained in § 75.3, the Commissioner of Indian Affairs or his authorized representative shall provide notice of the bringing up to date of the membership roll through publication of these amended regulations in the *FEDERAL REGISTER* and through appropriate press releases and other public notices.

(c) Application forms may be obtained from the Tribal Enrollment Office of the Eastern Band of Cherokee Indians, Council House, Cherokee, North Carolina 28719. Completed applications must be received by the Tribal Enrollment Office no later than midnight January 8, 1975.

(d) Requests for applications for enrollment in the Band received after midnight of the deadline date will not be furnished until after the funds have been distributed.

(e) In lieu of the procedures given in § 75.14, appeals from rejected applicants must be in writing and filed pursuant to part 62 of this subchapter, a copy of which shall be furnished with each notice of rejection.

(f) The Tribal Council and the Superintendent shall attach separate statements to the roll certifying that to the best of their knowledge and belief, the roll contains only the names of those persons who were determined to meet the requirements for enrollment. The roll shall then be submitted through

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the Area Director to the Commissioner for approval.

(g) To facilitate the work of the Tribal Enrollment Committee the Commissioner may issue special instructions not inconsistent with the regulations in this part 75.

[39 FR 43391, Dec. 13, 1974. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 81—TRIBAL REORGANIZATION UNDER A FEDERAL STATUTE

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AUTHORITY: 25 U.S.C. 473a, 476, 477, and 503.

SOURCE: 46 FR 1670, Jan. 7, 1981, unless otherwise noted. Redesignated at 47 FR 13327, Mar. 30, 1982.

§ 81.1 Definitions.

As used in this part:

(a) *Adult Indian* means any Indian as defined in paragraph (i) of this section who has attained the age of 18 years.

(b) *Amendment* means any modification, change, or total revision of a constitution or charter.

(c) *Authorizing Officer* means the Bureau of Indian Affairs official having authority to authorize the calling of a Secretarial election.

(d) *Cast ballot* means an official ballot that is cast in the proper manner at

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the proper time by a duly registered voter. A ballot is cast by duly placing it in the ballot box or, in the case of absentee voting, when the ballot is duly received through the mail by the election board.

(e) *Charter* means the charter of incorporation the Secretary may issue to a reorganized tribe pursuant to Federal Statute.

(f) *Commissioner* means the Commissioner of Indian Affairs or his/her authorized representative.

(g) *Constitution or Constitution and Bylaws* means the written organizational framework of any tribe reorganized pursuant to a Federal Statute for the exercise of governmental powers.

(h) *Federal Statute* means one of the following: (1) The Act of June 18, 1934, 48 Stat. 984, as amended (Indian Reorganization Act); (2) the Act of June 26, 1936, 49 Stat. 1967 (Oklahoma Indian Welfare Act); or (3) the Act of May 1, 1936, 49 Stat. 1250 (Alaska Native Reorganization Act).

(i) *Indian* means: (1) All persons who are members of those tribes listed or eligible to be listed in the FEDERAL REGISTER pursuant to 25 CFR 83.6(b) as recognized by and receiving services from the Bureau of Indian Affairs; provided, that the tribes have not voted to exclude themselves from the Act of June 18, 1934, 43 Stat. 984, as amended; and (2) any person not a member of one of the listed or eligible to be listed tribes who possesses at least one-half degree of Indian blood.

(j) *Invalid ballot* means an official cast ballot discovered at the time the votes are counted which does not comply with the requirements for voting or is not an official ballot. An invalid ballot is not to be counted for determining the number of cast ballots.

(k) *Member* means any Indian who is duly enrolled in a tribe who meets a tribe's written criteria for membership or who is recognized as belonging to a tribe by the local Indians comprising the tribe.

(l) *Mutilated ballot* means an official ballot that has been damaged to the extent that it is not possible to determine the choice the voter intended to make. There are two kinds of mutilated official ballots:

(1) A ballot that is mutilated and not cast. In this case, the mutilated ballot may be exchanged for a new one. If the need arises to exchange a mutilated absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is mutilated and cast. A mutilated cast ballot is to be counted in the same manner as a spoiled cast ballot.

(m) *Officer in Charge* means the Superintendent, Administrative Officer, or other official of the local unit of the Bureau of Indian Affairs (or a Bureau employee that such person might designate) having administrative jurisdiction over a tribe.

(n) *Official ballot* means a ballot prepared by the Bureau of Indian Affairs for use in an election pursuant to this part. It is possible that an official ballot may be found to be either spoiled or mutilated at the time the votes are counted.

(o) *Registration* means the act whereby persons, who are eligible to vote, become entitled or qualified to cast ballots by having their names placed on the list of persons who will be permitted to vote.

(p) *Reorganized tribe* means a tribe whose members have adopted a constitution pursuant to a Federal Statute.

(q) *Reservation* means any area established by treaty, Congressional Act, Executive Order, or otherwise for the use or occupancy of Indians.

(r) *Revocation* means that act whereby the adult members of a tribe vote to abandon their constitutional form of government as opposed to their voting to amend or totally revise it.

(s) *Secretarial election* means an election held within a tribe pursuant to regulations prescribed by the Secretary as authorized by Federal Statute (as distinguished from *tribal* elections which are conducted under tribal authority. (See *Cheyenne River Sioux Tribe v. Andrus*, 566 F. 2d 1085 (8th Cir., 1977), cert. denied 439 U.S. 820 (1978)).

(t) *Secretary* means the Secretary of the Interior or his/her authorized representative.

(u) *Spoiled ballot* means an official ballot that has been marked in such a way that it is not possible to determine

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the intent of the voter, a ballot that has not been marked at all, or one that has been marked so as to violate the secrecy of the ballot. There are two kinds of spoiled official ballots:

(1) A ballot that is spoiled and not cast. In this case, the spoiled ballot may be exchanged for a new one. If the need arises to exchange a spoiled absentee ballot, no additional time will be provided for the new ballot to be received by the election board.

(2) A ballot that is spoiled and cast. A spoiled cast ballot is to be counted in tabulating the total votes cast in conjunction with determining whether the required percentage of the qualified voters has participated in the election.

(v) *Tribal government* means that entity established pursuant to a tribal constitution as empowered to speak for the tribe or in the absence thereof any group or individual that is recognized by the tribal members as empowered to speak for the tribe.

(w) *Tribe* means: (1) Any Indian entity that has not voted to exclude itself from the Indian Reorganization Act and is included, or is eligible to be included, among those tribes, bands, pueblos, groups, communities, or Alaska Native entities listed in the FEDERAL REGISTER pursuant to §83.6(b) of this chapter as recognized and receiving services from the Bureau of Indian Affairs; and (2) any group of Indians whose members each have at least one-half degree of Indian blood for whom a reservation is established and who each reside on that reservation. Such tribes may consist of any consolidation of one or more tribes or parts of tribes.

(x) *Voting district* means a geographical area established to facilitate a tribal election process.

§81.2 Purpose and scope.

(a) The purpose of this part is to provide uniformity and order in:

- (1) Holding Secretarial elections for voting on proposed constitutions when tribes wish to reorganize,
- (2) Adopting constitutional amendments,
- (3) Ratifying and amending charters,
- (4) Revoking constitutions, and
- (5) Facilitating the calling of such elections by the Secretary under provisions of a Federal Statute.

(b) This part may also be used as a guideline by tribes wishing to hold constitutional elections that are not held pursuant to a Federal Statute.

(c) Where a discrepancy might appear to exist between these regulations and a specific requirement of the statute governing the reorganization of a tribe or ratification and amendment of charters, the regulations shall be interpreted to conform with the statute.

(d) As much as possible, Secretarial elections shall be scheduled so as to avoid their being held at the same time as *tribal* elections in order to avoid the confusion that results from different requirements for each kind of election.

§81.3 Group eligibility.

(a) No tribe which has voted to exclude itself from the provisions of the Indian Reorganization Act, or is otherwise precluded by law, may be reorganized under a Federal Statute. Tribes wishing to reorganize or a reorganized tribe seeking to amend its constitution and bylaws or wishing to vote to revoke such document shall do so under the regulations in this part.

(b) Charters issued to reorganized tribes shall be ratified or amended under the regulations in this part.

§81.4 Assistance from the Department of the Interior.

Representatives of the Department of the Interior will cooperate with and offer advice and assistance (including the proposing of amendments), to any tribe in drafting a constitution and bylaws, an amendment, a charter or charter amendment, or in revocation of constitutions. Any payments that might be necessary to non-Bureau staff assisting in the conduct of the election shall be made from tribal funds.

§81.5 Request to call election.

(a) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws or to revoke a constitution and bylaws, upon a request from the tribal government.

(b) The Secretary shall authorize the calling of an election to adopt a constitution and bylaws pursuant to a Federal Statute upon receipt of a petition bearing the signatures of at least 60 percent of the tribe's adult members.

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(c) The Secretary shall authorize the calling of an election to ratify a charter at the time the charter is issued, but he/she may issue a charter to a reservation-based tribe only upon petition by at least one-third of the adult members of the tribe. No ratification, however, shall be valid unless the tribe has a constitution adopted and approved pursuant to the relevant Federal Statute.

(d) The Secretary shall authorize the calling of an election on the adoption of amendments to a constitution and bylaws or a charter when requested pursuant to the amendment article of those documents. The election shall be conducted as prescribed in this part unless the amendment article of the constitution and bylaws or the charter provides otherwise, in which case the provisions of those documents shall rule where applicable.

(e) If the amendment provisions of a tribal constitution or charter have become outdated and amendment can not be effected pursuant to them, the Secretary may authorize an election under this part to amend the documents when the recognized tribal government so requests.

(f) Any authorization not acted upon within 90 days (tribes in Alaska shall be granted 120 days) from the date of issuance will be considered void. Notification of the election date as provided for in § 81.14 shall constitute the action envisioned in this section. Extension of an authorization may be granted upon a valid and reasonable request from the election board. Copies of authorizations shall be furnished the requesting tribe or petitioners.

(g) In those instances where conflicting proposals to amend a single constitutional or charter provision are submitted, that proposal first received by the officer in charge, if found valid, shall be placed before the voters before any consideration is given other proposals. Other proposals shall be considered in order of their receipt; provided, they are resubmitted following final action on the initial submission. This procedure shall also apply in those instances where new or revised constitutions are at issue.

§ 81.6 Entitlement to vote.

(a) If the group is a tribe, or tribes, of a reservation and is acting to effect reorganization under a Federal Statute for the first time:

(1) Any duly registered adult member regardless of residence shall be entitled to vote on the adoption of a constitution and bylaws.

(2) Duly registered adult nonresident members and ill or physically disabled registered adult resident members may vote by absentee ballot (see § 81.19).

(b) If the group is composed of the adult Indian residents of a reservation:

(1) Any adult duly registered member physically residing on the reservation shall be entitled to vote.

(2) Absentee voting shall be permitted only for duly registered residents temporarily absent from the reservation, ill, or physically disabled.

(c) If the group is a tribe, or tribes, without a reservation as defined in this part, any duly registered member shall be entitled to vote on the adoption of a constitution and bylaws by either arriving at a polling place or by requesting, properly completing, and timely casting an absentee ballot as determined by the election board pursuant to the relevant Federal Statute; provided, that outside of Alaska and Oklahoma, a reservation shall be established for the tribe before it becomes entitled to vote on the adoption of a constitution.

(d) For a reorganized tribe to amend its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters that was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(e) For a reorganized tribe to revoke its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters as was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

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(f) For a reorganized tribe to ratify a charter or to adopt a charter amendment, any adult member who has duly registered shall be entitled to vote, provided that if the tribe is of a reservation, only duly registered members physically residing on the reservation shall be entitled to vote.

§81.7 Adoption, ratification, or revocation by majority vote.

Except as it may be further limited by this part, a constitution and bylaws, amendments thereto, or charter and charter amendments shall be considered adopted, ratified, or revoked if a majority of those actually voting are in favor of adoption, ratification, or revocation. The total vote cast, however, must be at least 30 percent of those entitled to vote, unless, with regard to amendments, the constitution provides otherwise. The names of persons appearing on the registration list who have not reached eighteen years of age by the date of the election, shall be removed from the list of registered voters when determining whether the required percentage of participation has been achieved. Unless the existing constitution or charter provides otherwise, none of the actions cited in this section shall become effective until they are approved by the Secretary. The validity of any charter ratification shall be dependent upon the tribe first having reorganized. Duly ratified charters shall be revoked or surrendered only by Act of Congress.

§81.8 Election board.

(a) There shall be an election board consisting of the officer in charge acting as chairman and at least two representatives of the tribal governing body or an authorized representative committee. Where such persons may be unwilling or unable to serve, the chairman shall select at least two adult members of the tribe to serve. In addition, the officer in charge may appoint an interpreter and as many clerks and poll watchers as he/she deems necessary, but they shall not be members of the board.

(b) It shall be the duty of the board to conduct elections in compliance with the procedures described in this part and in particular:

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(1) To see that the name of each person offering to vote is on the official list of registered voters;

(2) To keep the ballot boxes locked at all times except when ballots are being counted;

(3) To see that ballots are cast only by registered voters and that the voting list is checked to indicate this;

(4) To begin to count the regularly cast ballots immediately after the close of the polls and then the absentee ballots, pursuant to §81.21;

(5) To post and certify the election returns;

(6) To return the following to the officer in charge:

(i) The ballots (in marked and locked boxes);

(ii) All unused ballots; and

(iii) The completed Certificate of Results of Election. The officer in charge shall retain the ballots and other material among official records for at least one year. At the end of one year, the officer in charge shall forward the contents of the boxes and other related material to the appropriate Federal Records Center.

§81.9 Voting districts.

If: (a) Voting districts have not already been designated for tribal elections in the tribal constitution or by tribal election ordinance or resolution; and (b) in the election board's judgment voting districts are needed, the board shall establish them and designate a polling place for each district. Where a reservation exists, no voting district may be established beyond its boundaries.

§81.10 District Election Boards.

(a) Where voting districts have been established by the tribal constitution, ordinance, resolution, or by the election board, the election board shall appoint district election boards for each district, which shall have the duties prescribed above for the election board except that they shall return to the election board:

(1) The ballots (in marked and locked boxes),

(2) All unused ballots, and

(3) Their certifications of the district election results on the certification forms prescribed by the election board.

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(1) Any duly registered adult member regardless of residence shall be entitled to vote on the adoption of a constitution and bylaws.

(2) Duly registered adult nonresident members and ill or physically disabled registered adult resident members may vote by absentee ballot (see § 81.19).

(b) If the group is composed of the adult Indian residents of a reservation:

(1) Any adult duly registered member physically residing on the reservation shall be entitled to vote.

(2) Absentee voting shall be permitted only for duly registered residents temporarily absent from the reservation, ill, or physically disabled.

(c) If the group is a tribe, or tribes, without a reservation as defined in this part, any duly registered member shall be entitled to vote on the adoption of a constitution and bylaws by either arriving at a polling place or by requesting, properly completing, and timely casting an absentee ballot as determined by the election board pursuant to the relevant Federal Statute; provided, that outside of Alaska and Oklahoma, a reservation shall be established for the tribe before it becomes entitled to vote on the adoption of a constitution.

(d) For a reorganized tribe to amend its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters that was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(e) For a reorganized tribe to revoke its constitution and bylaws, only members who have duly registered shall be entitled to vote; provided, that registration is open to the same class of voters as was entitled to vote in the Secretarial election that effected its reorganization, unless the amendment article of the existing constitution provides otherwise.

(f) For a reorganized tribe to ratify a charter or to adopt a charter amendment, any adult member who has duly registered shall be entitled to vote, provided that if the tribe is of a reservation, only duly registered members

physically residing on the reservation shall be entitled to vote.

§ 81.7 Adoption, ratification, or revocation by majority vote.

Except as it may be further limited by this part, a constitution and bylaws, amendments thereto, or charter and charter amendments shall be considered adopted, ratified, or revoked if a majority of those actually voting are in favor of adoption, ratification, or revocation. The total vote cast, however, must be at least 30 percent of those entitled to vote, unless, with regard to amendments, the constitution provides otherwise. The names of persons appearing on the registration list who have not reached eighteen years of age by the date of the election, shall be removed from the list of registered voters when determining whether the required percentage of participation has been achieved. Unless the existing constitution or charter provides otherwise, none of the actions cited in this section shall become effective until they are approved by the Secretary. The validity of any charter ratification shall be dependent upon the tribe first having reorganized. Duly ratified charters shall be revoked or surrendered only by Act of Congress.

§ 81.8 Election board.

(a) There shall be an election board consisting of the officer in charge acting as chairman and at least two representatives of the tribal governing body or an authorized representative committee. Where such persons may be unwilling or unable to serve, the chairman shall select at least two adult members of the tribe to serve. In addition, the officer in charge may appoint an interpreter and as many clerks and poll watchers as he/she deems necessary, but they shall not be members of the board.

(b) It shall be the duty of the board to conduct elections in compliance with the procedures described in this part and in particular:

(1) To see that the name of each person offering to vote is on the official list of registered voters;

(2) To keep the ballot boxes locked at all times except when ballots are being counted;

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(3) To see that ballots are cast only by registered voters and that the voting list is checked to indicate this;

(4) To begin to count the regularly cast ballots immediately after the close of the polls and then the absentee ballots, pursuant to §81.21;

(5) To post and certify the election returns;

(6) To return the following to the officer in charge:

(i) The ballots (in marked and locked boxes);

(ii) All unused ballots; and

(iii) The completed Certificate of Results of Election. The officer in charge shall retain the ballots and other material among official records for at least one year. At the end of one year, the officer in charge shall forward the contents of the boxes and other related material to the appropriate Federal Records Center.

§81.9 Voting districts.

If: (a) Voting districts have not already been designated for tribal elections in the tribal constitution or by tribal election ordinance or resolution; and (b) in the election board's judgment voting districts are needed, the board shall establish them and designate a polling place for each district. Where a reservation exists, no voting district may be established beyond its boundaries.

§81.10 District Election Boards.

(a) Where voting districts have been established by the tribal constitution, ordinance, resolution, or by the election board, the election board shall appoint district election boards for each district, which shall have the duties prescribed above for the election board except that they shall return to the election board:

(1) The ballots (in marked and locked boxes),

(2) All unused ballots, and

(3) Their certifications of the district election results on the certification forms prescribed by the election board.

(b) The board will compile the election results for the entire reservation and transmit them together with the aforementioned ballots and ballot boxes to the officer in charge.

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§81.11 Registration.

(a) Only registered voters will be entitled to vote, and all determinations of the sufficiency of the number of ballots cast will be based upon the number of registered voters. The election board, upon receipt of authorization to conduct an election, shall notify by regular mail all adult members of the tribe, who to its knowledge are eligible to vote pursuant to §81.6 of the need to register if they intend to vote. Any tribal member who, to the election board's knowledge, will become 18 years of age within 150 days (180 days for Alaska tribes) from the date of authorization and who is otherwise eligible to vote shall also be notified and shall be eligible to register, provided that such a person shall not be entitled to vote if election day falls before the individual's 18th birthday. This notice shall be sent to an individual's last known address as it appears on the records of the local unit of the Bureau of Indian Affairs having jurisdiction. Each notice addressed to a tribal member not residing on the reservation shall be accompanied by a preaddressed registration form (BIA Form 8302) which shall set forth the following information in the upper right corner:

(1) OMB Clearance Number 1076-003, Expires June 30, 1983;

(2) The name and address of the person desiring to register;

(3) A statement with a signature line attesting that the individual is a tribal member and is at least 18 years of age, or will be within 150 days, (180 days for Alaska tribes) from the date of authorization; and

(4) The three following statements: "Completion of and return of this registration form is necessary if you desire to become qualified to vote in the forthcoming constitutional or charter election." "This form, upon completion and return to the election board, shall be the basis for determining whether you qualify to have your name placed upon the list of registered voters and receive a ballot" and "completion and return of this form is voluntary." Members who qualify as absentee voters and wish to cast an absentee ballot must complete and return the above

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registration form before, or in conjunction with, requesting an absentee ballot in sufficient time to permit compliance with § 81.12.

(b) The following records shall be kept for all notices:

(1) Names and addresses of persons to whom notices are mailed;

(2) Date of mailing; and

(3) A copy of each return registration request (including from whom received and date and time of receipt).

Tribal members living on the reservation who desire to vote must register with the election board in the manner it determines in time to permit compliance with § 81.12. Registration procedures for such Indians shall be included in the notice of the need to register to resident members.

[46 FR 1670, Jan. 7, 1981, as amended at 46 FR 38352, July 27, 1981. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 81.12 Voting list.

The election board shall compile in alphabetical order an official list of registered voters arranged by voting districts, if any. This list shall designate, where applicable, those who have requested an absentee ballot and the members of the tribe who are or will have attained the age of 18 years within 150 days (180 days for Alaska tribes) from the date an election is authorized and who have duly registered to vote. A copy of this list shall be supplied to any district election board and shall be posted at the headquarters of the local administrative unit of the Bureau of Indian Affairs, the tribal headquarters, and at various other public places designated by the election board at least 20 days prior to the election.

§ 81.13 Eligibility disputes.

The election board shall determine the eligibility of any written claim to vote presented to it by one whose name does not appear on the official list of registered voters as well as any written challenge of the right to vote of anyone whose name is on the list. Its decision shall be final. It shall rule on all claims no later than ten days before the election. Any claim not presented at least ten days before the election shall be disallowed. Nonresident claimants successfully appealing omission

from the list shall immediately be furnished an absentee ballot. Omission of names from the voters list due to late registration, if notification (pursuant to § 81.14) has been timely mailed, shall not be considered grounds for challenge.

§ 81.14 Election notices.

Not less than 30 nor more than 60 days notice shall be given of the date of the election. Such notice shall include the location of where the results will be posted. The notice shall also advise that persons must register if they intend to vote. The election board shall determine whether the notice will be given by television, radio, newspaper, poster, or mail, or by more than one of these methods and whether in an Indian language in addition to English. A copy of any written election notice may be mailed to each registered voter and shall be posted at the local administrative unit of the Bureau of Indian Affairs and elsewhere as directed by the election board. At any time after receiving Secretarial authorization to hold the election, the board shall make available to the adult members of the tribe the text of any amendment or proposed constitution and bylaws, amendment thereto, charter, or charter amendment. The election board may determine the manner and timing of the distribution. However, the text shall be posted at least within the local administrative unit of the Bureau and the tribal headquarters within two days following the giving of notice of the election date by the election board.

§ 81.15 Opening and closing of polls.

If polling places are established, the polls shall remain open from 8 a.m. to 7 p.m., local time, unless different hours are set by the election board and the voters are informed of this in the election notice.

§ 81.16 Interpreters.

Interpreters, where needed, may be provided to explain the manner of voting to any voter who asks for instructions; provided, that all reasonable precautions are taken to ensure that the interpreter does not influence the voter in casting the ballot. The interpreter

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may accompany the voter into the booth upon the latter's request.

§81.17 Electioneering.

There shall be no electioneering during voting hours within 50 feet of any voting place. Sample ballots will be permitted in the voting booth.

§81.18 Manner of voting.

(a) Registered voters may vote by arriving at the appropriate polling place within the prescribed voting hours telling officials their names and addresses, signing their signature or mark on the voting list, and by marking and placing in the ballot box the ballots which will be handed to them. Voting shall be by secret ballot.

(b) Voting may take place at the same time regarding the adoption of a constitution, the ratification of a charter, or the amendment of such documents; provided, that entitlement to vote for the proposal is consistent with §81.6 of this part and, provided further, that no charter shall be considered ratified if the proposed constitution is not adopted and approved.

(c) The election board may choose not to use polling places and provide for the issuance and receipt of ballots entirely through the United States Postal Service. In that event, the election board shall use the appropriate procedures set forth in this part relating to absentee balloting.

§81.19 Absentee voting.

(a) Nonresident members who have registered may vote by absentee ballot except as prohibited by §81.6. Also, whenever, due to temporary absence from the reservation, illness, or physical disability, a registered and otherwise eligible voter is not able to vote at the polls and notifies the election board, the voter shall be entitled to vote by absentee ballot. Upon his or her request, the election board shall give or mail absentee ballots to registered voters who may be entitled to receive them pursuant to §81.6. At the same time, such voters will also be provided a copy of the proposal to be voted upon when the full text does not appear on the ballot. Appropriate records shall be kept of those from whom requests are received and the date they were re-

ceived. The election board shall allow an absentee voter no less than ten days from the mailing out of an absentee ballot to receive and return the ballot. This period shall not be afforded absentee voters desiring to exchange a mutilated or spoiled ballot less than ten days before the election date. While requests for absentee ballots received less than ten days before an election will be promptly honored, no absentee ballot will be counted if received later than either the close of the polls or after some other deadline established by the election board. The election board shall furnish election officials the names of individuals who have been given or had mailed to them an absentee ballot.

(b) Accompanying the absentee ballot shall be:

- (1) An inner envelope bearing on the outside, the words "Absentee Ballot,"
- (2) Instructions for completion of the absentee ballot,
- (3) A copy of the proposed amendment, and
- (4) A preaddressed outer envelope, imprinted on the back with a certificate as follows:

I, (name of voter), hereby certify that I am a qualified voter of the (name) Tribe of Indians; that I will be 18 years of age or over at the election date and am entitled to vote in the election to be held on (date of election); and that I cannot appear at the polling place on the reservation on the date of the election because (indicate one of the following reasons): I am a non resident voter ☐; or I expect to be temporarily absent from the reservation ☐; or because of illness ☐; or physical disability ☐; or because no polling place has been established ☐. I further certify that I marked the enclosed ballot in secret.

Signed: _____ (voter's signature).

(c) The absentee voter shall mark the ballot and the ballot shall then be folded so as to conceal the marking and be placed in the envelope marked "Absentee Ballot" and the envelope sealed. The voter shall then place the sealed envelope marked "Absentee Ballot" in the outer envelope, seal it and complete the certificate and mail it. The preaddressed outer envelope shall be directed to the election board at the reservation. Absentee ballots must be received by the election board not later

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than the close of the polls or as otherwise directed by the election board.

(d) The election board shall make and keep a record of ballots mailed, to whom mailed, the date of mailing, the address on the envelope, the date of the return of the ballot, and from whom received. After duly recording the receipt date of absentee ballots received on time, representatives of the election board shall open the outer envelopes, secure them and place the unmarked inner envelopes containing the ballots in a separate box reserved for that purpose. After all other ballots have been counted, the absentee ballots shall be counted immediately and included in the results of the election.

§81.20 Ballots.

(a) Ballots are to be prepared clearly and simply so that it is easy for the voters to indicate a choice between no more than two alternatives. For example, if a tribal council or the petitioners propose to reduce the one-half degree blood quantum required to qualify for membership but want the voters to decide whether it should be one-fourth or one-eighth, it would not be appropriate to put those two alternatives on the ballot. Doing so, would deny the voters an opportunity to vote for keeping the one-half degree blood quantum. Neither would it be appropriate to include all three blood quantum alternatives. Rather, those proposing the change should decide which blood quantum is to be submitted to the voters. The ballot in the Secretarial election would then give the electors the choice of marking either "yes" or "no." A vote against the proposed change would be in favor of keeping the one-half degree blood quantum in the example.

(b) In preparing ballots for proposed amendments, care should be taken to ensure that:

(1) Each proposed amendment addresses only a single question.

(2) If a proposed amendment conflicts with other provisions of the document being amended, the ballot shall be prepared so that the question includes all changes in those other directly related provisions in order to avoid contradictions within the document.

(3) When more than one amendment is being submitted to the voters at a given election, the proposals shall be identified with alphabetical designations rather than numerical. The first of the several proposals would be labeled "Proposed Amendment A," the next would be "Proposed Amendment B," etc. Those amendments that are adopted and approved would then be assigned consecutive numbers to follow those assigned any earlier amendments that may have been made to that governing document. A statement similar to the following shall appear on each of the proposed amendments and shall be completed following the election:

Having been duly adopted and approved, Proposed Amendment (A,B,C, etc.) is hereby designated as Amendment No. ___ to the (Constitution, Charter, etc.) of the (name of tribe) Tribe.

(c) The election board will supply all ballots. Each ballot shall be stamped in red ink on its face in the same place:

OFFICIAL BALLOT
(Facsimile Signature)
CHAIRMAN, ELECTION BOARD

(d) Should any voter spoil or mutilate a ballot in the course of voting at a poll, the voter shall destroy it in the presence of the election officials and the election officials shall then make note of the destroyed ballot and furnish the voter with another ballot.

(e) Any spoiled or mutilated absentee ballot may be exchanged for a new one by returning it to the election board with a request for another. The board shall honor the request promptly and note the dates of related actions. No extension of time will be granted for receipt of exchanged ballots that might not be cast on time.

§81.21 Counting of ballots.

All duly cast ballots are to be counted. Even though it will not be possible to determine the intent of the voter regarding spoiled and mutilated ballots, they are to be counted for purposes of determining whether the required percentage of voters have cast their ballots in the election. Invalid ballots shall not be counted for purposes of determining the required percentage of votes cast.

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§ 81.22 Contesting of election results.

Any qualified voter, within three days following the posting of the results of an election, may challenge the election results by filing with the Secretary through the officer in charge the grounds for the challenge, *together with substantiating evidence*. If in the opinion of the Secretary, the objections are valid and warrant a recount or new election, the Secretary shall order a recount or a new election. The results of the recount or new election shall be final.

§ 81.23 Posting and certifying election results.

(a) The results of the election shall be posted in the local Bureau of Indian Affairs office, tribal headquarters, and at other appropriate public places determined by the election board.

(b) The election board shall certify the results of the election on the following form and transmit them to the local unit of the Bureau of Indian Affairs:

Certificate of Results of Election

Pursuant to a Secretarial election authorized by the (title of authorizing officer) on (date), the attached Constitution and Bylaws (Amendment, Charter or Charter Amendment) of the (name of tribe) was submitted to the qualified voters of the tribe and on (date), was duly (adopted) (ratified) (rejected) or (revoked) by a vote of (number) for and (number) against and (number) cast ballots found spoiled or mutilated in an election in which at least 30 percent (or such "percentages" as may be required to amend according to the constitution) of the (number) members entitled to vote, cast their ballot in accordance with (appropriate Federal statute). Signed: (By the chairman of the election board and board members.)

Date: _____

§ 81.24 Approval, disapproval, or rejection action.

(a) Action to approve or disapprove constitutional actions will be taken promptly by the authorizing officer following receipt of the original text of the material voted upon and the original of the Certificate of Results of Election from the officer in charge.

(1) When required and granted, the authorizing officer shall furnish a tribe with written approval of constitutional actions. In the absence of an election

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challenge, the approval shall be issued promptly following the expiration of the contest period. Copies of his/her written approval, the Certificate of Results of Election, and the text of the material voted upon shall be transmitted to the Commissioner of Indian Affairs, 18th and C Streets, NW., Washington, DC 20245.

(2) When a proposed constitution or charter action is rejected by the voters, the authorizing officer shall indicate in writing to the tribe his/her awareness of the election results and send to the Commissioner of Indian Affairs in Washington, DC, copies of the communication, the Certificate of Results of Election and the text of the material voted upon.

(3) When the authorizing officer disapproves a constitutional action, he/she shall in writing promptly notify the tribe of the determination and furnish the Commissioner of Indian Affairs in Washington, DC, a copy of the communication along with the Certificate of Results of Election and the text of the material voted upon.

(b) Where Secretarial approval of proposed constitutional and charter actions is required in conjunction with authorization of an election, copies of the formal approval shall immediately be furnished the Commissioner of Indian Affairs in Washington, DC, by the authorizing officer and be followed in accordance with paragraph (a)(1) of this section by copies of the Certificate of the Results of Election and the text of the material voted upon as soon as it is available.

PART 82—PETITIONING PROCEDURES FOR TRIBES REORGANIZED UNDER FEDERAL STATUTE AND OTHER ORGANIZED TRIBES

Sec.

- 82.1 Definitions.
- 82.2 Purpose and scope.
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